

EXHIBIT 3

Blendtec's Written Notice of Discovery Issue

From: [Kapaloski, Tammy](#)
To: ["Patrick McGill"](#); [Lisa Martens](#); [Martin Bader](#); LButler@parsonsbehle.com; NThomas@parsonsbehle.com
Cc: [Brett Foster \(foster.brett@dorsey.com\)](mailto:Brett.Foster(foster.brett@dorsey.com))
Subject: Request to Meet and Confer on Blendjet's Insufficient Discovery Responses
Date: Thursday, December 8, 2022 5:11:23 PM
Attachments: [2022-12-07 - BlendJet's Responses to Blendtec's First Set Of ESI Discovery Requests.pdf](#)
[2022-11-23 - Deficiency Letter to Blendjet Re Blendjet's Document Production.pdf](#)

Dear Patrick,

We would like to meet and confer with you as soon as possible regarding Blendjet's attached responses to Blendtec's first set of ESI Discovery Requests. Specifically, we would like to meet and confer with you regarding the following:

1. As you know, we disagree with Blendjet's position on page 3 of its responses that a party was required to produce ESI by default. In any event, we have received very little ESI from Blendjet. Pursuant to your interpretation of the ESI Protocol, Blendjet should have already been producing non-email ESI, but with very few exceptions has not done so. Please let us know when Blendjet will produce its non-email ESI.
2. As we have previously stated, including in my November 21 email to you, we do not agree that Blendjet can limit the scope of ESI production to the scope of documents that Blendjet agreed to produce in response to Blendtec's first set of RFPs. That would defeat the purpose of search terms and the ESI Protocol does not support your position. As we've previously stated, paragraph 35 of the ESI Protocol states that "email production requests shall identify the custodian, search terms, and time frame for the documents sought." We have provided you with search terms. Blendjet's obligation is to produce to us all custodian emails with those search terms. Unless you withdraw this improper and baseless objection, we will immediately take this issue up with Judge Pead.
3. We do not agree that Blendjet can "refuse to review and/or produce emails" (see p. 6 of Blendjet's objections) based on your unilateral view that Blendtec's search terms "yield a disproportionate, unreasonably large, and/or unduly burdensome number of record hits." There is nothing in the ESI Protocol or general discovery practice that permits this.
4. You claim that Blendtec's search terms result in an unreasonably large number of hits, but you have refused our repeated requests that you provide us with the report required under paragraph 40 of the ESI Protocol. We have asked you for the paragraph 40 report at least 3 times now. You have completely ignored our repeated requests for this report and have now stated that you will "refuse to review and/or produce emails" based on your unilateral determination that Blendtec's search terms yield an unreasonably large number of hits. This reeks of bad faith and we intend to take this issue up with the Court immediately.
5. Your responses fail to state a date by which Blendjet will produce its ESI as required by Rule 34(b)(2)(B). Please provide us with a specific date by which you will produce ESI.

In addition, we would like to meet and confer with you regarding the issues set forth in our

November 23 letter to you (also attached for your reference).

We are available to meet and confer any time between 10:00 a.m. and 4:00 pm MST on Monday, December 12. Please let us know a time on Monday that works for you and I will circulate dial-in information for the call.

Thanks,
Tammy

From: Patrick McGill <PMcGill@sheppardmullin.com>

Sent: Wednesday, December 7, 2022 4:32 PM

To: Foster, Brett <foster.brett@dorsey.com>; Kapaloski, Tammy <kapaloski.tammy@dorsey.com>

Cc: Martin Bader <MBader@sheppardmullin.com>; Lisa Martens <LMartens@sheppardmullin.com>;
Jesse Salen <JSalen@sheppardmullin.com>; NThomas@parsonsbehle.com;
LButler@parsonsbehle.com

Subject: Blendtec v. BlendJet - Objections and Responses to Blendtec's First Set of ESI Discovery Requests

EXTERNAL FROM OUTSIDE DORSEY. BE CAUTIOUS OF LINKS AND ATTACHMENTS.

Dear Brett and Tammy,

Please see BlendJet's responses and objections to Blendtec's First Set of ESI Discovery Requests.

Sincerely,
Patrick

Patrick M. McGill

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